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FILED  
Clerk  
District Court

FEB 14 2006

For The Northern Mariana Islands  
By \_\_\_\_\_  
(Deputy Clerk)

11 **IN THE UNITED STATES DISTRICT COURT**  
12 **FOR THE**  
13 **NORTHERN MARIANA ISLANDS**

14 **YU SUK CHUNG,**

15 Plaintiff,

16 vs.

17 **WORLD CORPORATION,**

18 Defendant.

CIVIL CASE NO. 04-00001

**DEFENDANT'S REPLY IN SUPPORT OF  
MOTION FOR CERTIFICATION  
PURSUANT TO RULE 54(b) OR IN THE  
ALTERNATIVE TO AMEND THE  
JUDGMENT**

**Date: February 16, 2006**  
**Time: 8:30 a.m.**  
**Judge: Hon. Alex R. Munson**

1 Defendant World Corporation respectfully submits this Reply in Support of its Motion for  
2 Certification Pursuant to Rule 54(b) or in the Alternative to Amend the Judgment.

3 World Corporation incorporates by reference herein the arguments advanced in its  
4 Memorandum in Support of the Motion filed on December 22, 2005.

5 A district court's certification pursuant Rule 54(b) will be upheld absent an abuse of  
6 discretion. *Sheehan v. Atlanta Int'l Ins., Co.*, 812 F.2d 465, 468 (9<sup>th</sup> Cir. 1987). As the Ninth  
7 Circuit has observed:

8 Deference is granted to the district court's decision because it is  
9 "the one most likely to be familiar with the case and with any  
10 justifiable reasons for delay." *Sheehan v. Atlanta Int'l Ins. Co.*,  
11 812 F.2d 465, 468 (9<sup>th</sup> Cir. 1987) (quoting *Curtiss-Wright Corp. v.*  
*General Elec. Co.*, 466 U.S. 1, 10, 100 S.Ct. 1460, 1466, 64  
L.Ed.2d 1 (1980) (citation omitted)).

12 Rule 54(b) certification is proper if it will aid "expeditious  
13 decision" of the case. *Sheehan*, 812 F.2d at 468. "The Rule 54(b)  
14 claims do not have to be separate from and independent of the  
15 remaining claims." *Id.* However, Rule 54(b) certification is  
16 scrutinized to "prevent piecemeal appeals in cases which should be  
reviewed only as single units." *McIntyre v. United States*, 789  
F.2d 1408, 1410 (9<sup>th</sup> Cir. 1986) (quoting *Curtiss-Wright*, 446 U.S.  
at 10, 100 S.Ct. at 1466)....

17 *Texaco, Inc. v. Ponsoldt*, 939 F.2d 794, 797-798 (9<sup>th</sup> Cir. 1991). "The present trend is toward  
18 greater deference to a district court's decision to certify under Rule 54(b)." *Id.* at 798.


19 The Plaintiff argues that Rule 54(b) certification would not be proper because his claims  
20 for "fraud and breach of contract may be viewed as a single claim" and that his "lawsuit  
21 constitutes a single claim that is as yet not final." (Opp. at 2). However, other Ninth Circuit  
22 authority provides that the claim to be certified need not necessarily be separate from and  
23 independent of the remaining claims. *Texaco*, 939 F.2d at 797-798 (citing *Sheehan*, 812 F.2d at  
24 468).

25 As stated in Defendant's Memorandum in Support of its Motion (filed Dec. 22, 2005), in  
26 the event that the Court should certify the December 8, 2005 judgment under Rule 54(b), a stay of  
27 the proceedings is warranted, and specifically a stay of the upcoming new trial on the fraudulent  
28

1 misrepresentation claim. Staying the proceedings would promote judicial economy and  
2 efficiency because the issues to be resolved on appeal (e.g., the issue of federal subject matter  
3 jurisdiction (*see* Amended Notice of Appeal filed Jan. 11, 2006), could save the Court and the  
4 parties the time, effort, and expense in pursuing further proceedings that could be nullified and  
5 rendered meaningless by an appellate ruling finding no subject matter jurisdiction. *See Stadler v.*  
6 *McCulloch*, 882 F.Supp. 1524, 1527 (E.D. Pa. 1995) (granting a stay of proceedings upon Rule  
7 54(b) certification and observing that an appellate ruling "might cause the parties to retrace a  
8 number of their steps, and could render meaningless much of the work completed in the  
9 interim.").

10  
11 **RESPECTFULLY SUBMITTED** this 14<sup>th</sup> day of February, 2006.

12 **DAVID J. LUJAN, ESQ.**  
13 **IGNACIO C. AGUIGUI, ESQ.**  
14 **LUJAN AGUIGUI & PEREZ LLP**

15 By:   
16 **IGNACIO C. AGUIGUI, ESQ.**

## PROOF OF SERVICE

I certify that a true and correct copy of the foregoing REPLY IN SUPPORT OF MOTION FOR CERTIFICATION PURSUANT TO RULE 54(b) OR IN THE ALTERNATIVE TO AMEND THE JUDGMENT will at my direction be served on February 14, 2006, via hand delivery to:

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